STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

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The State of Minnesota,
by Hubert H. Humphrey, III,
its attorney general,
and
Blue Cross and Blue Shield
of Minnesota,

Plaintiffs,

vs. File No. C1-94-8565

Philip Morris Incorporated, R.J.
Reynolds Tobacco Company, Brown
& Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
Tobacco Company, The American
Tobacco Company, Liggett Group, Inc.,
The Council for Tobacco Research-U.S.A.,
Inc., and The Tobacco Institute, Inc.,

Defendants.

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DEPOSITION OF DAVID L. WILLIAMS

Volume I, Pages 1 - 47

http://legacy.library.ucsf.edu/tid/mnp05a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/ssgd0001

(The following is the deposition of DAVID L. WILLIAMS, taken pursuant to Notice of Taking Deposition, at the offices of Hunton & Williams, 1900 K Street N.W., Washington, D.C., commencing at approximately 2:00 o'clock p.m., December 3, 1997.)

APPEARANCES:

On Behalf of the Plaintiffs:

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On Behalf of Philip Morris Incorporated:

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ALSO APPEARING:

William E. Hutchings, Jr., Paralegal

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P R O C E E D I N G S

(Witness sworn.)

DAVID L. WILLIAMS

called as a witness, being first duly sworn, was examined and testified as follows:

ADVERSE EXAMINATION

BY MR. GORDON:

Q. Could you state your full name for the record, please.

A. David Lee Williams.

Q. Mr. Williams, you are employed by Philip Morris Incorporated; is that correct?

A. Yes.

Q. What is your title now?

A. I am a senior research scientist.

Q. And you understand that you are appearing today as a spokesperson for Philip Morris in this portion of the deposition with respect to the collection and production of documents relating to cigarette formulas?

A. That's correct.

Q. Okay. How long have you been employed by Philip Morris?

A. Since October 1979.

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Q. And just so we're clear, when I say "Philip Morris," I'm referring to the defendant in this case, Philip Morris Incorporated, also known as, I believe, Philip Morris U.S.A.

A. Okay. Same answer.

Q. Okay. What was your first position in 1979 with Philip Morris?

A. I worked in the chemical research area synthesizing potential flavors.

Q. How long did you work in that capacity?

A. For approximately four or five years.

MR. NUNLEY: David, let me interject and say one thing. You had asked me before we started about taking your jacket off.

THE WITNESS: Yeah.

MR. NUNLEY: I told you to wear it. That's when I thought we would be on video. If you would be more comfortable taking it off, you're welcome to take it off.

MR. GORDON: Also, if you need a break for any reason, let me know, although I don't expect this portion of the deposition to take very long.

BY MR. GORDON:

Q. What was your next position at Philip Morris?

A. I worked for a while on the synthesis of a

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tobacco beetle pheromone. After that I worked on a project on tobacco called crossed solubles base web.

Q. I'm sorry?

A. Crossed solubles base web project.

Q. Did that have something to do with reconstituted tobacco?

A. No, it did not.

Q. Okay. I guess I have no idea, then, what "crossed solubles base web" refers to.

A. It is where you take lamina, like bright, burley and oriental lamina tobacco, full, hundred percent tobacco, and we extracted the tobacco with water, and then we reapplied the extract to the base web material in all possible combinations.

Q. How does that differ from the reconstitution process?

A. What I meant was that it doesn't use the ingredients, et cetera, that was in the reconstituted process. It is a form of reconstitution in that you add something back to the tobacco, --

Q. Okay.

A. -- basically.

Q. The difference being there are no non-tobacco additives.

A. That's correct.

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Q. Okay. Was this a process that was ever used commercially?

A. No, not that I'm aware of.

Q. Okay. What was your next activity for Philip Morris?

A. At this time I believe we're approaching 1987, sometime during 1987, and I came to work in the area which was involved with cigarette ingredient compliance.

Q. What do you mean by "cigarette ingredient compliance?"

A. Compliance to the U.S. law requiring that we give a list of the ingredients that we use on tobacco on an annual basis to Health and Human Services.

Q. The first time that the tobacco industry was required to submit a list to the Department of Health and Human Services was 1986; is that right?

A. That's correct. In April of 1986.

Q. And what was your role around about 1987 with respect to the HHS list from that point on?

A. The disclosure to HHS, after the April 1986, was at the end of each year, so it would be a disclosure in December of the -- at the end of the year. So in 1987 I had the job of helping compile the list that was submitted to HHS for 1987.

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Q. What activities were involved in compiling the list each year?

MR. NUNLEY: Objection, vague. You can answer.

A. It involved pulling together all of the flavors that we used in our products and compiling a list from that information, which can be complicated, and putting that list together in an alphabetical form with CAS numbers, C-A-S numbers being Chemical Abstract Service numbers, and submitting that information to Covington & Burling, the law firm that compiled the industry list for the major tobacco companies in the U.S.

Q. I want to back up a step and see if I can separate this out. The list that you were compiling consisted only of non-tobacco ingredients added to tobacco filler; is that correct?

A. That's correct.

Q. It did not include any ingredients added to paper; correct?

MR. NUNLEY: Objection, vague. If you don't mind me asking, do you mean other than ingredients used to manufacture the paper itself?

MR. GORDON: Well let's -- let's clarify. I'm not sure I intended a distinction, but if there

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is one, I'd like to know about it.

Q. What I'm --

When I refer to compiling it, I'm talking about the list submitted to the federal government.

A. Right.

Q. The HHS list. Did that list ever reflect any chemical additives to the tobacco paper?

A. To my --

Q. The cigarette paper I mean.

A. Right. To my knowledge, it did not during the time I've been working in that particular area. There were occasions, for instance, where menthol was added to the foil or menthol was added to the filter; that would have been included because it can -- it will migrate to the tobacco filler. There was also a time when we added some tobacco flavors to the filler -- I'm sorry, to the filter; they were also included on the list.

Q. Is it your understanding that the law required disclosure of additives to filters or paper?

MR. NUNLEY: Objection, calls for a legal opinion or conclusion.

A. It was my understanding it was the ingredients added to tobacco.

Q. How did you make the distinction, then, when you

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included the list of -- or included in the list flavors that had been added to the filter?

MR. NUNLEY: Same objection.

A. As I recall, the person that I was working for at the time indicated that the intention in this case was for that to be flavors that had a very good chance of -- of being in the tobacco, and so we were going to go ahead and include them.

Q. It had a good chance because of migration?

A. Migration, volatility, whatever the reason. But they felt like we should include it.

Q. During what period of time were you involved in the HHS list then?

A. From 1987 to the current -- to current time.

Q. Okay. Do you have --

At any time, then, in the last 10 years, have you had other activities in addition to being responsible for compiling the HHS list?

A. Yes. We --

Depending on the situation, I've been asked to do a variety of things to compile ingredient lists and to put ingredient information together, depending on the situation.

Q. Now my understanding is there is something known as the brand history project; is that correct?

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A. Yes.
Q. Is that something you've been involved in?
A. Yes, it is.
Q. What is the brand history project?
A. It's a project that was basically requested by counsel to put together all of our ingredient information, specifically the ingredients added to tobacco, throughout our history, to the best of our ability.
Q. So the brand history project was broader than the HHS-list activities?

MR. NUNLEY: Objection. I think that misstates his prior testimony, but --

In what way broader, Corey?

MR. GORDON: Well, how did the brand -- strike my last question.

Q. How did the brand history project, then, differ from the activities you were doing each year for the HHS list?
A. Well the activities for the HHS list refer to a single year at a time, so we would do -- for 1987 we would be reporting the ingredients we used in 1987. For the brands history project, we're going back throughout our -- throughout our history, but I think maybe back to 1953 or 1954, and putting together

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lists based on our historical files. So it's not just looking at your current information, it's looking at history way back in time.

Q. When did this project begin?

A. I believe it began in 1996.

Q. Is it still ongoing?

A. Yes.

Q. Do you have a target date for completion?

A. We have a target date, but don't hold me to that. Our target date is probably about two years.

Q. From this point on?

A. From this point on.

Q. So 1999, 2000, something like that?

A. Yes.

Q. So you anticipate that the total project is going to take somewhere in the neighborhood of three to four years?

A. I think so, yes.

Q. What is involved in compiling the brand histories that is taking this period of time?

A. Well first of all, it's compiling the information -- when I say that, our hard-copy information because that's where the history is contained -- and putting it in proper order. Once the information is in proper order, the documents

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themselves are scanned into the system, computer system, so that you have a scanned version on the system. Next I believe the process is to type in the information verbatim, all the -- all the --

MR. NUNLEY: Let me ask you to stop a second. Corey, I realize that this is something that's subject to court-ordered production, but along the same lines we were talking about this morning with the documents produced, it is what we would consider, although the court may hold otherwise, a work-product privilege. If we can just have an agreement that his explaining how it's done doesn't waive any work-product privilege relating to that. I'd appreciate it.

MR. GORDON: Right. And as we discussed this morning, it's our position that the work-product issue was addressed by the judge, but to the extent that, you know, you don't want Philip Morris to be waiving anything, that's fine.

MR. NUNLEY: I appreciate that.

I'm sorry, David, do you want what you said so far read back?

THE WITNESS: Yeah, if you don't mind.

MR. GORDON: Do you want to just show him the screen?

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MR. NUNLEY: Sure.

(Discussion off the record.)

A. I think I was saying that the information is then typed in verbatim, and being very careful to check and make sure the information is all typed in so that we can produce the documents later based on any type of research that's done, because the information is totally typed in. After that process, I believe we will then start to look at how to link the information together; that is, to put the primary brand formulas, the preblend concentrate and the direct materials and the compound flavor formulations all together, and if -- and to the best of our ability to do that on a -- on a quantitative basis.

Q. Are there limits to your ability to do that?

MR. NUNLEY: Objection as to form.

A. What do you mean?

Q. Well I guess what I'm -- I'm --

What I am principally interested in understanding is where the gaps are in your ability to reconstruct formulas.

A. Oh.

Q. And just maybe to save a whole bunch of time, if you can tell me where, as you've been doing this brand history project, where you discovered there are

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gaps in knowledge, if there are any.

A. Well to this point we haven't gotten to the phase where the gaps would start showing up. We're -- again, we're scanning in and we're copying stuff verbatim. The gaps, wherever they exist, will start to show up once we get to the portion where we're linking the information together; for instance, the primary brand formula and the preblend concentrates call for this particular material and we find out we don't have that disclosure. So at this point I can't tell you what -- where the gaps exist.

Q. Let's maybe define the items you mentioned. What is a primary brand formula?

A. The primary brand formula is the formula that gives you the top line information on what is contained in a particular brand, and what I mean by that, what is added to it in terms of ingredients. There is also on some of those documents limited process information as well. Included on the primary brand formula are references to what we refer to as preblends, concentrates and things like aftercut.

Q. Okay. Again I want to define some terms here. A "preblend concentrate" refers to chemical ingredients that are added to the tobacco before it is blended?

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MR. NUNLEY: Well, objection to the use of the --

I mean "chemical" is some sort of limiting term. You can just tell him what --

You'd like to know what's in a preblend concentrate; is that fair?

MR. GORDON: Sure. I'm not trying to pick words that have any hidden connotations. Just so you go ahead and explain it to me.

A. Okay. A preblend concentrate is a group of flavors and other ingredients put together or prepared before it's applied to the tobacco so that you're applying the whole group at the same time, and they are done at different -- in different parts of the process.

Q. So the preblend portion refers to the fact that it's all mixed together prior to application.

A. That's correct.

Q. Okay. What's an aftercut solution?

MR. NUNLEY: Objection. I think, Corey, that term -- I don't think that's --

Well objection. I don't think it's called an aftercut solution. I don't know if the witness used that term or not, but --

THE WITNESS: I may have used that term.

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MR. NUNLEY: -- I just want to make sure --

MR. GORDON: That's what I wrote down. But if there's a different term, tell me what it is.

MR. NUNLEY: I apologize. I'm wrong.

A. The aftercut normally is a solution, and it's a --

Q. Mr. Nunley is looking for secret, hidden agendas in my questions, and honest to God, they aren't there. I'm -- so that -- but go ahead and correct me if I use a term incorrectly.

A. An aftercut really is just another name for a preblend concentrate. It also is a series of flavors and ingredients put together, and normally it is applied to the whole blend for a particular brand at the -- at or near the end of the process.

Q. Okay. Let's go back to the primary brand formula. The primary brand formula would contain an indication as to the different types of tobacco in the particular brand; is that correct?

A. You're talking about a leaf formula?

Q. Leaf formula.

A. It has some limited leaf formula on it. I believe so, yes.

Q. And it would reflect the percentage of the different types of leafs in the product; is that

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correct?
A. Yes.
Q. And if a particular brand formula uses any reconstituted tobacco products, that would be reflected in the primary brand formula as well?
A. Yes, I believe it would.
Q. And again the percentage and the type of reconstituted tobacco is reflected in the primary brand formula.
A. Yes.
MR. NUNLEY: Objection. We are talking about things that span '54 to '94. Just so it's understood, he's talking general to help you understand.
MR. GORDON: Okay. And that's indeed a segue to my next question.
Q. Are you aware of any period of time that you've been pulling this information together from 1954 to the present time where the primary brand formulas did not reflect, at least in a general sense, the different types of tobacco leafs used, and the percentages, and the recon tobacco if any was used?
A. There may -- there may have been. The reason I answer it that way is I'm not familiar without looking at the documents or having them in front of

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me of all the history. These particular documents, the primary brand formulas and the preblend concentrates, are actually kept outside our area, but we need them to do our job. But they have had a -- a change, they have gone through changes over -- over the history of the company. I think to begin with they contained all the information, and later on they contained only a portion of the information but referred to the rest of the information which you had to get other documents to give the whole story.

So what that means is the primary brand formula would refer to the preblend concentrates, you would have to go and get the preblend concentrate information to have the rest of the story, whereas early on in history, I believe it was all on a single primary brand formula. So there has been an evolution of the primary brand formula.

Q. Specifically with respect to leaf formula information, is that pretty much consistently contained on the primary brand formulas?

A. I believe so. But again, I would feel better by looking at a few documents to say for certain. But I believe in most cases, if not all, it's there.

Q. It's my understanding that you were the primary person responsible for collecting documents that were

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produced in this case responsive to plaintiffs' document requests for documents sufficient to show formulas for cigarettes produced -- sold in Minnesota from 1954 to 1994.

MR. NUNLEY: No. I don't -- I don't know what your understanding is, but to the extent that is based on the record, I think it mischaracterizes it to some extent.

MR. GORDON: Okay.

Q. What was your involvement in the project of collecting documents that I just described?

A. My involvement primarily was collecting the documents within our area, which are the vendor disclosures for compounded flavors. So my job was to make sure that we produced, to the best of our ability, those documents. The primary brand formulas and the preblend concentrates were actually collected from another area.

Q. What area were they collected from?

A. It's an area under the name Flavor Development, but it really is an area that I refer to as operation services or technical services.

Q. So you were not physically involved in collecting the primary brand formulas.

A. That's correct.

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Q. Is it your understanding that Philip Morris has been able to produce to plaintiffs in this case all primary brand formulas for all brands sold in Minnesota from 1954 to 1994?

A. It's my understanding that's what they did.

Q. Okay. Before the deposition I advised Mr. Nunley that as best we can tell we do not appear to have primary brand formulas for 1990 and 1994, and I know Mr. Nunley has set the wheels in motion to find out why we're having that problem, whether we're just missing them or if they may not have been produced or if they may not have existed. Do you have any knowledge as to why --

Well first let me do it in stages. Is it your understanding that there's a primary brand formula for every brand for every year?

MR. NUNLEY: Let me just answer and say this before you answer that question so we'll -- in case it becomes an issue timewise. I mean literally it was just before -- I want to say the deposition started about 2:00. I think Mr. Gordon raised that question with me about noon. I've undertaken to find out the answer. I don't have it yet, but I'm working on it. To 1994 you can answer his question, if you have it in mind.

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A. Okay. If you would ask it one more time. I'm sorry.

Q. Well one possibility that we've speculated on is that if there was no brand -- if there was -- strike that.

If there was no formula change, say, from 1989 to 1991, would there nevertheless have been a brand -- primary brand formula sheet prepared for 1990 for a particular brand?

A. The way I recall, the way they work is that on the hand copies, when there was a change in a particular primary brand formula, there would be a reflection where a date was crossed through and a new date was put on the document. If there were no changes during that period you're referring to, that may be an explanation as to why things could be missing. Because if there were no changes, the primary brand formula that preceded it would be the same; in other words, it would still be in effect until the next change was made.

It's probably highly unlikely that it would go that long without some sort of change though.

Q. As a general proposition, though, there were no primary brand formulas that were routinely prepared, you know, every January 1st, for example.

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A. Not that I'm aware of.
Q. So if we have a primary brand formula from December of 1989 and we don't see another one until December of 1991, it could possibly mean that there simply was no brand change during those intervening months, and so no primary brand formula bearing a 1990 date would exist.
A. That's correct. That's a possible explanation.
Q. All right. At least for the more recent years, like 1990 and 1994, does Philip Morris have the ability to quickly determine whether there are primary brand formulas in existence for a given brand for a given year?
MR. NUNLEY: Objection, vague.
A. Well again, we would in those cases have to refer back to the hand copies. But since the documents have been recently organized, I think you could go to those and in a fairly quick fashion find out.
Q. Let me explain what I'm getting at. I'm assuming that if we had a gap in 1955, it might be a little bit more difficult for you to determine whether it's a gap because there was no formula change in 1955 or because that particular formula just happens to be missing. Is that a fair

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assumption?
A. Yes.
Q. And I'm also assuming that for the more recent years, such as 1990 and 1994, it's a little bit easier for Philip Morris to determine whether there's been a brand formula change or not during those years.
MR. NUNLEY: Objection, vague. But you can answer.
A. That's probably true on the surface, although I think you'll have to get into 1995 and on to be on the safe side in answering that question yes. I think you still have some trouble even for '90 through '94.
Q. Why is that?
A. It's just that the information has been stored in the same way throughout history. There has been no other method used until more recent -- in more recent times.
Q. Has the information about primary brand formulas ever been entered into a computer database other than what you might be doing in connection with the brand history project?
A. There is a computer database that keeps up with current primary brand formulas.

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Q. How long has that been keeping up with current ones?
A. I don't know the time period for sure, but at least back into the '80s.
Q. And that's something that's used by Philip Morris separate and apart from the brand history project; is that right?
A. Yes.
Q. Is there a name for this particular computer database?
A. I believe it's referred to as the AS400 database.
Q. What other information is contained in the AS400 database besides primary brand formulas?
A. It would also contain current preblend concentrate information, current aftercut information, and I believe some specification information as well.
Q. What do you mean by "specification information?"
A. The specifications for incoming materials received by Philip Morris, our specified -- I'll say it's specifying what is used in the formula.
Q. When you say "current information," does it somehow delete historical information?
MR. NUNLEY: Objection to the term.

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A. What I mean is that it's always current, that the information is kept up with on a day-to-day basis, and so it's always current.

Q. So if you press whatever buttons you need to press on the AS400 program today, we could find out what's in a Marlboro 85 that's being produced right now today; is that right?

A. You could find out what the direct adds are to the Marlboro.

Q. What would we be missing?

A. You would be missing the ingredients that are contained in vendor compounded flavors, which are contained in our area.

Q. The vendor compounded flavors are also referred to as flavorhouse ingredients?

A. Yes.

Q. But the AS --

Does the AS400 program have some indication as to which flavorhouse ingredient is used even if it doesn't have the detailed formula?

MR. NUNLEY: Objection, vague.

A. Yes, it does.

Q. Okay. So today if we were to press the buttons on this AS400 program, we could -- we'd see all the tobacco types that are in a particular cigarette, the

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preblend concentrates, the direct material aftercut additives, and the names of the compounds from flavorhouses.

MR. NUNLEY: Well --

Q. Is that correct?

MR. NUNLEY: -- objection to this extent: I realize that --

Well, my only point is that I think you may be oversimplifying, pushing a button and it comes up, but -- and just --

I mean let the record reflect Mr. Gordon appears to acknowledge it may be an oversimplification. He didn't do it verbally, but --

MR. GORDON: Right. And I'm not meaning to hold you to my description of how one would access it, I'm just trying to get a sense of what the information is.

A. You could pull that type of information up, yes. The way you described, it is so many different things. You would pull one part of that information up at a time. It wouldn't magic -- everything wouldn't magically appear on the screen at one time.

Q. Okay. Now the next question is: Could I find out any of that information, say, for last year's Marlboro?

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A. I'm not familiar enough with the AS400 to know how they keep what history they do keep. I don't know. I -- it's --

To my knowledge you could not, based on what I've heard, but I don't know why. I don't know if it's because of the way the system works or because it was referring to specification information at that time and they no longer have that on the system because it keeps current. But I don't believe, to my knowledge, that you could pull up 1996 information.

Q. Are you aware of any computer database that stores historical brand information, brand formula information?

A. At this time, no.

Q. Are you aware of any gaps in primary brand formulas produced in this case?

MR. NUNLEY: Can I --

I want to give you a full record on something. When you said "historic," do you mean something other than immediately current?

MR. GORDON: Yes.

MR. NUNLEY: Okay.

MR. GORDON: I think we understand what the AS400 program could tell us about today's cigarettes.

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MR. NUNLEY: There's another database that I want --

Will you tell Mr. Gordon about what's called the Product Integrity database?

THE WITNESS: Yes.

MR. GORDON: Okay.

A. At our area we have what is called the Product Integrity database, which includes information from the AS400 and the vendor disclosure information as well, so it brings together or marries together all that information so that we can produce an ingredient list for Marlboro 85s, as you referred to earlier, for 19 -- current, for current products. The database is fashioned so that we probably can, with some effort, produce information back into 1996 as well, so that if you're thinking of that as history, we may have a couple of years' history in that fashion.

Q. But that's as far back as the Product Integrity database would go?

A. Unless it goes back to the end of 1995. It's either the end of '95 or beginning '96 that it really -- you can really start to get information in a usable fashion.

Q. There's no database that contains information,

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say, on the 1980s.

A. Except for what we've done in the brand history project, no.

Q. If a Philip Morris scientist for some reason wanted to find out today what was in a Marlboro in 1985, what would he or she have to do to find that out?

A. They would have to go and obtain the information I've described. They would have to get the primary brand formulas, they would have to get the preblend concentrate and aftercut formulas, and they would have to get the information on direct materials including the vendor formulations to give a complete list as you're referring to, and then you would have to compile that information.

Q. Where would they find out information about the filters, the type of filters?

A. You're talking about historically or current?

Q. Right, this hypothetical scientist who wants to know what was going on back in 1985.

A. Quite frankly, I'm not sure. Probably through specification information.

Q. How was the specification information maintained?

A. The only --

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What I refer to, specification information, I'm talking about the information I've seen off of the AS400 system where it would refer to a filter by -- maybe by a DM code, and then there would be -- which is a direct material code, and then there would be information, if it's available, on the filter and its weight, some physical properties, that sort of thing. And there could be -- I don't know, but there could be other information.

Q. Have specifications for cigarettes sold in Minnesota between 1954 and 1994 been produced in this litigation?

A. I don't know.

Q. Who would be the person most knowledgeable about that?

A. Maybe counsel. But I mean in terms of a Philip Morris employee, I'm not -- I'm not sure unless it was somebody -- be someone working on the AS400 system.

Q. In order to know what level of filtration or ventilation a particular cigarette would have, what type of document would you have to look at?

A. Again that's out of my area. I'd be guessing. I really don't know.

Q. How long has Philip Morris used computers in

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designing cigarettes?
A. I don't know anything about the designing of cigarettes.
Q. Are you familiar with a computer design program called the CDM or Computer Design Model?
A. No, I'm not.
Q. Do you have any knowledge about how or whether Philip Morris retains records of computer assisted design changes made in cigarette specifications?
A. No, I don't.
Q. This morning counsel made available to us I think seven bankers boxes -- they're sitting over there on a counter -- which, as I understand it, are a compilation of the DM code information for all DM codes used at Philip Morris.
MR. GORDON: Counsel is shaking his head, so I've obviously misunderstood that.
MR. NUNLEY: What I intended to represent and the witness -- well, I mean I don't --
You can ask the witness what it is. I would say I disagree. But I mean basically what we gave you were the DM code information for compound flavors, is what I think I told you.
MR. GORDON: Okay. And we talked beforehand that you're not waiving the work-product

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objection, and we'll note that on the record.
BY MR. GORDON:
Q. Are you familiar with what's in those seven boxes, the DM code information?
A. Yes.
Q. Okay. Were you involved in the process of compiling them?
A. The documents came from my area, and I was involved, yes.
Q. And it's limited to DM codes for compound flavors; is that correct?
A. I believe there may be some information on direct materials as well, meaning single ingredient compounds.
Q. Is there anything that is called a direct material other than single ingredient compounds or flavorhouse compounds?
A. Those are what we refer to as direct materials. I think that's the sum total. If you think of a preblend concentrate, it also has a code, and of course the preblend concentrate is added directly to the product, but it's really a compilation of the direct materials.
Q. A preblend concentrate will have a formula that will show different DM codes added to -- or mixed

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together to create the preblend concentrate; is that right?

A. That's correct.

Q. The preblend concentrate code would have then a different number than the DM codes that are included in those seven boxes?

A. Yes.

Q. Okay. Now in those seven boxes, let's say we wanted to find the DM code 123 supplied by XYZ flavorhouse. As I understand it, we could look at alphabetically XYZ -- the section of XYZ's flavors and then find DM code 123, and that folder will contain disclosure sheets that disclose the details of what's contained in that particular direct material; is that correct?

A. That's correct.

Q. How long did it take you to compile that material in those seven boxes?

A. I don't know the exact time period, but it seemed like a long time. I would say probably three or four months.

MR. GORDON: Okay. And Mr. Nunley, just so it's clear, you're going to actually produce these seven boxes to us in Minneapolis.

MR. NUNLEY: Yes.

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MR. GORDON: All right.

MR. NUNLEY: Probably the first of next week.

MR. GORDON: All right. And it's my understanding that the documents themselves have previously been produced, but not in the organized fashion that they are in now.

MR. NUNLEY: That's correct. Let me just --

I mean there may be the odd document that has not been, but my understanding is the bulk of them have been previously produced. What you're getting is a reordering of those in a fashion that I think -- I know is more useful to us and I believe it will be more useful to you in terms of usefulness.

MR. GORDON: Let's go off the record for one second.

(Discussion off the record.)

MR. GORDON: Let's go back on the record.

BY MR. GORDON:

Q. Let me show you, Mr. Williams, what's been previously marked as Plaintiffs' Exhibit 1302, a document bearing Bates number 2059701582. Can you tell me in general what this is?

I would just as soon, if we can avoid mentioning

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specific ingredients, do so; that way this particular portion of the transcript won't be Category II.

A. Well it shows some mentioned ingredients by filler code. It was an effort to select these particular ingredients and find out what filler codes or brands they were in, and subsequently to find out what the levels were of the materials used in the -- in the filler.

Q. This appears to me to be a printout from a computer database. Is that correct?

A. Actually it's a compilation of information put into a computer.

Q. Was this part of the brand history project?

A. No.

Q. Is there a project name for this compilation?

A. There was a project name for this compilation of ingredients called Project SWEET.

Q. S-W-E-E-T?

A. Yes.

Q. What was the nature of that particular project?

A. It was to determine where these ingredients were found, and then to subsequently remove the ingredients.

Q. So it involved only the ingredients that are on this particular page?

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A. That's correct.
Q. The reason I ask is that it appears that the -- well strike that.
At the very top of the printout is a number and a name of a particular chemical, and then it looks like this page is a printout of compounds that may have had this particular chemical in it. Is that correct?
A. Right. It's a printout of where the actual chemical itself was used, or ingredient, and then it also shows some natural ingredients that the material was contained in.
Q. And it also says page one on this, and this is the only document we've had produced like this, and I'm wondering, were there no other chemicals or no other pages of this type of data?
A. I believe this is a one-page document. The computer would often do that, print out a page number.
Q. Okay. So if we wanted to find out the same type of information that's on Exhibit 1302 for a different chemical or a different compound, is there any database in existence now that we could turn to that would allow us to generate that information?
A. For current information, the Product Integrity

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database could do that.

Q. How about historical?

A. I'm afraid not.

Q. So if you wanted to know, for example, every Philip Morris cigarette historically that has ever used diammonium phosphate, there's no comparable database one can turn to as reflected in 1302 that would easily generate the cigarettes and the levels; is that right?

A. In the case that you mentioned, diammonium phosphate, since that is a direct material, the information could be generated most likely from the AS400 system.

Q. For current usage.

A. For current usage.

Q. How about for historical usage?

A. I don't believe so. I don't believe there is a system.

Q. If a scientist today at Philip Morris wanted to know every cigarette produced by Philip Morris that has ever used diammonium hydrogen phosphate --

That's the same as diammonium phosphate; right?

A. Yes.

Q. Okay. What would he or she have to do to find out that information?

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A. Currently we would have to go through the process we have already described; that is, go to the formulas and find it that way by hand.
Q. To your knowledge, has that been done for any specific ingredients?
MR. NUNLEY: Objection, vague. Any timeframe?
MR. GORDON: In the last five years, and separate and apart from the brand history project.
A. I don't recall any effort made to determine if a particular ingredient were in all -- or what -- what Philip Morris products over a period of time, other than special cases where we've had to compile information because of some sort of litigation or something. It would be due to a specific request.
Q. Are you aware of any situation occurring in the process of collecting documents for production in this case with respect to formulas where the people responsible for collecting documents simply couldn't find a particular type of document for a particular brand for a given year?
A. That's sort of a broad question because it's so many different areas. I'm not aware of any for primary brand formulas or preblend concentrates or aftercut. I thought that set was complete.

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In terms of compound flavor situations, since we have it referred to actual formulas in these cases, I don't know what would be missing. There could be some compound flavor information missing.

Q. As you sit here today, you're not specifically aware of any period of time, for example, where there just were no compound flavor formulations available.

A. What do you mean by that question? I'm not sure --

Q. Well I'm just wondering if in the process of collecting things it came to Philip Morris's attention that, gee, we can't find the third-party flavorhouse formulations for 1976.

A. In the special cases that I mentioned to you earlier where we actually pulled together information for -- for whatever -- for a litigation case, all right, if we were missing the information at that particular time, we would go to the vendor and get it.

Q. In this case you were requested to produce all formula information for all cigarettes sold in Minnesota between 1954 and 1994. Were any steps undertaken with that, you know, broad request to get additional vendor disclosure information?

A. No.

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Q. Are there any vendor formulas -- strike that.

Are you aware of any flavorhouse compounds that had been used in Philip Morris cigarettes for which Philip Morris does not have detailed information as to what was in the third-party flavorhouse formula?

A. I can't sit here and name them specifically, but yes, I think there is some compound flavor information missing.

Q. Do you know what -- strike that.

Is that for periods of time or particular vendors, or just haphazard?

A. It could be haphazard. Both -- both situations.

Q. Are you aware of any specific periods of time where there just simply isn't that information available? Was there a period of time before which Philip Morris was being routinely provided with detailed flavorhouse ingredients?

A. I can say that from the time I've been in this area, from 1987 forward, we've gotten detailed information on all of our formulas, and I think some -- somewhat prior to that we also received formulas. I just don't know how far back the information that we received goes. I think we probably started receiving the bulk of the information around the '84, '85 time period.

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Q. In connection with the brand history project, have you had occasion to go back to any third-party vendors and ask for additional information?

A. No.

MR. GORDON: I think I have nothing further in this portion.

MR. NUNLEY: Give me just a second with the witness. I may have a question or two.

Why don't we take just a minute break. Maybe I won't have. Okay?

MR. GORDON: Sure.

(Recess taken.)

DIRECT EXAMINATION

BY MR. NUNLEY:

Q. Mr. Williams, Mr. Gordon was asking you some questions about the vendor disclosures.

A. Correct.

Q. I will go over there.

(Discussion off the record.)

Q. You started working in the area where vendor disclosures are kept in 1987; is that correct?

A. That's about right, yes.

Q. Prior to 1987 had Philip Morris undertaken an effort to gather vendor disclosures from its compound flavor suppliers?

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A. Yes, they had.
Q. When did that effort begin in earnest?
A. I believe it began in the -- primarily in the 1984 timeframe.
Q. Prior to 1984 or thereabouts, had Philip Morris regularly been receiving disclosures from its vendors?
A. No.
Q. Okay. Generally speaking, if one goes to the vendor disclosure files that Philip Morris has presently, where do you start seeing the vendor disclosures date-wise begin? And this is a general question.
A. In general you'll see some documents dated '84 and you'll see documents dated all the years thereafter. So starting in about '84. I'd be surprised if you saw one dated -- or too many dated earlier than that.
Q. Mr. Gordon, in his questions that don't have any, as he says, underlying hidden agenda in them, uses the term "haphazard." To your knowledge, post-1984, is there any haphazardness about the vendor disclosures that Philip Morris has?
A. No.
Q. All right. When he referenced the term

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"haphazard," were you thinking about pre-1984?
A. I was thinking about pre-1994, yes.
Q. '94 or '84?
A. I'm sorry, pre-1984.
Q. Okay.
A. Excuse me.
MR. NUNLEY: That's all.

RECROSS-EXAMINATION

BY MR. GORDON:
Q. Just one or two follow-ups, if you don't mind me doing it from here.
Prior to 1984, then, it would have been unusual to have a complete vendor disclosure for a third-party flavor; is that right?
A. That's correct.
Q. How would Philip Morris have known what it was putting into its cigarettes when it used the third-party flavor formula for which it didn't have a vendor disclosure prior to 1984?
A. I don't believe they would have a complete knowledge of what was going in their product.
Q. How far back did Philip Morris use third-party flavors?
A. Without looking at the documents, I can't say for sure, but I would say that they were probably

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using them back to the beginning of the time period we're talking about. At least a few.

Q. So there are probably more than 20 years of time when Philip Morris was using third-party flavor ingredients in its cigarettes without knowing the formulas of what they were putting in; is that right?

MR. NUNLEY: Objection as to form.

A. There would be formulas during that time period that Philip Morris would not have, and therefore it would not know the ingredients that were in the vendor formulations.

MR. GORDON: That's it for this section.

MR. NUNLEY: That's fine.

(Deposition concluded at 3:06 o'clock p.m.)

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C E R T I F I C A T E

I, Richard G. Stirewalt, hereby certify that I am qualified as a verbatim shorthand reporter; that I took in stenographic shorthand the testimony of DAVID L. WILLIAMS at the time and place aforesaid; and that the foregoing transcript consisting of pages 1 through 45 is a true and correct, full and complete transcription of said shorthand notes, to the best of my ability.

Dated at Deerwood, Minnesota, this 8th day of December, 1997.

RICHARD G. STIREWALT
Registered Professional Reporter
Notary Public

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C E R T I F I C A T E

I, DAVID L. WILLIAMS, the deponent, hereby certify that I have read the foregoing transcript consisting of pages 1 through 45, and that said transcript is a true and correct, full and complete transcription of my deposition except:

DAVID L. WILLIAMS
Deponent

Sworn and subscribed to before me this day of , 1997.

Notary Public

My commission expires .

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